

STOVALL OIL CO.

IBLA 94-457

Decided March 26, 1997

Appeal from a Decision by the Platte River Resource Area Manager, Wyoming, Bureau of Land Management, converting rental charges for Produced Water Injection Well Right-of-Way WYW-90084 (Federal No. 1-26 and Federal No. 3-26) from a fee based on the number of sites to a fee based on the number of barrels of produced water injected into disposal wells.

Affirmed as modified.

1. Appraisals--Federal Land Policy and Management Act of 1976: Rights-of-Way--Rights-of-Way: Appraisals

The holder of a right-of-way grant for a produced water disposal site is required to pay annually, in advance, the fair market rental, as determined by the authorized officer by applying sound business management principles and, so far as practicable and feasible, using comparable commercial practices. In accordance with 43 C.F.R. § 2803.1-2(c)(3)(i) (1994), rental for nonlinear right-of-way grants must be based on a market survey of comparable rentals or on a value determination for specific parcels.

2. Appraisals--Federal Land Policy and Management Act of 1976: Rights-of-Way--Rights-of-Way: Appraisals

A BLM decision to change the basis for the fair market rental for a produced water disposal site right-of-way from a rental based on the number of sites to a rental based on the number of barrels of produced water injected into disposal wells will be affirmed when a market survey of comparable produced water disposal leases discloses that a per barrel fee is utilized in the market place, and the appellant has not demonstrated error in that methodology or shown that the rental charges are excessive.

APPEARANCES: William W. Allen, P.E., and Nicholas Stovall for Stovall Oil Company.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Stovall Oil Company (Stovall) has appealed from an April 25, 1994, Decision issued by the Platte River (Wyoming) Resource Area Manager, Bureau of Land Management (BLM), converting the basis for calculating rental charges for production water disposal site Right-of-Way WYW-90084 from a fee based on the number of sites being used to a fee based on the number of barrels of produced water injected, and setting the rental for the period January 1, 1993, to December 31, 1994, at \$2,469.

Stovall operates the Schrader Flats Field, which has two producing wells (Federal No. 3-26 and Federal No. 8-26) on lease W-074863, and two injection wells (Federal No. 1-26 and Federal No. 3-26) on Right-of-Way WYW-90084. Stovall asserts that:

The Federal 3-26 is pumped once per week and makes 12 barrels of oil per month. The Federal 8-26 pumps continuously and averages 228 barrels of oil per month. Water produced from these two wells is injected in the Federal 1-26 well. (The Federal 3-26 is maintained as a standby injection well.)

(Statement of Reasons (SOR) at 1.)

On September 24, 1986, BLM issued Right-of-Way W[YW]-90084 to Ferguson and Bosworth (Stovall's predecessor-in-interest) for a term of 10 years. The grant authorized the holders "to construct, operate, maintain, and terminate * * * two (2) produced water disposal wells" on public lands described as the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of sec. 26, T. 31 N., R. 82 W., Sixth Principal Meridian, Natrona County, Wyoming. 1/ The rental terms, set out in paragraph 3 of the right-of-way agreement, were as follows:

For and in consideration of the rights granted, the holder agrees to pay the Bureau of Land Management fair market rental as determined by the authorized officer unless specifically exempted from such payment by regulation. Provided, however, that the rental may be adjusted by the authorized officer,

1/ The right-of-way grant, issued pursuant to Title V of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1761-1771 (1994), authorizes the holders "to use well bore and formation(s) into the federal mineral estate * * *" of two wells: the Federal No. 1-26 located at the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of sec. 26, T. 31 N., R. 82 W. and the Federal No. 3-26 located in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of sec. 26, T. 31 N., R. 82 W. The right-of-way grant authorizes the use of 1 acre surrounding each well. (Right-of-Way Grant W[YW]-90084 at 1.)

whenever necessary, to reflect changes in the fair market rental value as determined by the application of sound business management principles, and so far as is practicable and feasible, in accordance with comparable commercial practices.

Right-of-Way/Temporary Use Permit, Form 2800-14 (August 1985).

A list of stipulations, identified as Exhibit "B" Stipulations, were made a part of the right-of-way agreement. Operation/Maintenance Stipulation 3 reads as follows:

A report of the volume of water injected into each well must be submitted each month. The report must contain the right-of-way serial number, well number, and well location by legal description including subdivision, section, township, and range.

The number of days the well was used for disposal, the tubing pressure and the pressure in the tubing casing annulus during injection must also be included. The State of Wyoming Operator's Monthly Report of Wells (Form 2), as explained in the State's Rule 405 as a reporting option for disposal wells approved under State Rule 401, will be accepted as fulfilling the reporting requirement.

The record indicates that Ferguson and Bosworth submitted the monthly reports for the months of December 1986, January 1987, February through May 1987, July 1987, January 1988, February 1988, May 1988, June 1988, and September 1988. There is one undated report in the record.

On February 20, 1990, the Platte River Resource Area Manager approved the assignment of Right-of-Way WYW-90084 to Stovall. In a letter to Stovall dated March 12, 1990, the Area Manager stated that the regulations at 43 C.F.R. § 2803.1-2 require payment of fair market rental for rights-of-way and rental billing periods that coincide with the calendar year. Stovall was billed \$125 as a prorated right-of-way rental for the period from September 24, 1990, through December 31, 1991, and Stovall paid that amount on September 24, 1990. Stovall also paid \$100 as rental for the period from January 1, 1992, through December 31, 1992.

The rental for the period January 1, 1993, through December 31, 1993, was not levied, pending recalculation of the rental amount based on a new rental policy for computing and charging rental on produced water injection well rights-of-way issued by BLM. This policy was the result of a January 1993 market survey and appraisal of right-of-way rental rates for disposal wells on private lands. The BLM's new policy was outlined by the Deputy State Director, Lands and Renewable Resources, in Information Bulletin No. WY-93-334, dated May 14, 1993. This bulletin states that "Wyoming has recently converted from site rentals to rentals based on a per barrel fee,"

because the market survey indicating that basing rental fees on the number of barrels of disposed water was the established norm in the industry and the basis used by BLM in other states. 2/

The average rental was found to be 5 cents per barrel of produced water injected into a disposal well. This rate was deemed by BLM to be a reasonable rate to charge producers holding disposal well rights-of-way in Wyoming. District Managers were advised to refer to the monthly reports of operations (MRO's) or NTL-2B 3/ reports submitted by the well operators to determine the number of barrels of produced water injected into a disposal well when setting the annual fee under the new rental formula. The bulletin also recommended that disposal site right-of-way holders be asked to provide certified logs showing how much water was disposed of at each site if these reports were unavailable. 4/

The yearly rental is based on the previous year's use, and the rental is adjusted at the end of the following year by refunding the excess or collecting an additional payment to reflect actual use. (Information Bulletin No. WY-93-334 at 2.) The bulletin stated that monthly payments based on actual use might "be appropriate if a company has difficulty making a large annual payment." (Information Bulletin No. WY-93-334 at 2.)

On April 25, 1994, BLM issued its Decision advising Stovall of the new policy for computing annual rental fees and levying the following rental for Right-of-Way WYW-90084: \$100 (at the old rate) for the calendar year January 1, 1993, through December 31, 1993; \$33 prorated (at the old rate) for the 4-month period January 1, 1994, through April 30, 1994; and \$2,336 for the period May 1, 1994, through December 31, 1994. The rental for the latter part of 1994 was based on the 5 cents per barrel fee and derived from BLM's review of the Ferguson and Bosworth monthly operations reports. Payment of the total rental (\$2,469) was due within 30 days of receipt of the Decision. Stovall appealed and requested a stay. By Order dated June 6, 1994, Stovall's stay request was denied.

2/ See United States Department of the Interior, Bureau of Land Management, Appraisal Report: Market Survey, Salt Water Injection Well and Evaporative Pit Leases in Wyoming, dated and signed by appraisers on Jan. 24, and Jan. 28, 1993.

3/ NTL-2B is the Notice to Lessees and Operators (NTL)-2B, issued effective Jan. 1, 1976. This notice required Indian oil and gas lessees to request approval for the disposal of produced water. See 40 Fed. Reg. 57814 (Dec. 12, 1975).

4/ There are no reports in the record showing injection well use by Stovall under Right-of-Way WYW-90084.

On appeal, Stovall argues that the rental increase will make it uneconomic to operate its two producing wells. It states that it nets approximately \$908 per month from the producing lease and that the Federal Government receives a royalty of about \$208 per month on the lease. Stovall argues that

[b]ased on the proposed \$0.05 per barrel injection fee and a current daily injection rate of 480 barrels, the operating expenses would increase by \$730 per month to \$2480. This additional expense would cause the producing economic limit to increase to 249 barrels of oil per month, which is greater than 2140 barrels currently being produced. As a result, the producing wells would become uneconomic and Stovall Oil Company would be forced to plug and abandon them.

(SOR at 2.) 5/

On February 5, 1996, Stovall filed a letter requesting "reconsideration of * * * IBLA 94-457 because * * * the Federal 3-26 well was plugged and abandoned on September 2, 1994 and the Federal 8-26 well now produces five barrels of oil per day and 500 barrels of water per day on Lease No. W-074863." Stovall argues that the 5 cents per barrel injection fee and current injection rate of 500 barrels per day on Right-of-Way WYW-90084 will increase the operating expenses on its remaining producing well, making it uneconomic to operate. Stovall requests that the Board exempt Right-of-Way WYW-90084 from the 5 cents per barrel rental fee and that, instead, an annual rental fee of \$200 be assessed on the right-of-way.

We begin our discussion of the merits of Stovall's appeal by noting that this Board lacks authority to exempt Stovall from the 5 cents per barrel rental or grant its request that a \$200 (minimum) annual rental be set by reason of hardship. However, we do have jurisdiction to examine BLM's Decision to impose the 5 cents per barrel fee on produced water injection well rights-of-way in Wyoming and to determine whether, in this case, the Decision correctly follows relevant law and regulation.

[1] It is well-settled that, under section 504(g) of FLPMA, 43 U.S.C. § 1764(g) (1994), the holder of a right-of-way is to pay rental annually in advance and that the rental amount is to be based on the market value of the right-of-way. Laguna Gatuna, 121 IBLA 302, 306 (1991); AMAX Magnesium, 119 IBLA 281, 283 (1991); Mallon Oil Co., 104 IBLA 145, 150 (1988). Storage sites and injection or disposal wells, are identified in the regulation

5/ It appears that Stovall's estimate of increased operating expenses is off by \$10 per month ($480 \times 30 \times \$0.05 = \720).

at 43 C.F.R. § 2803.1-2(c)(3)(i) (1994) as nonlinear rights-of-way. The regulation further provides that the rental for nonlinear rights-of-way is to be based on a market survey of comparable rentals.

In this case, BLM undertook an appraisal of the fair market rental charged for produced water injection wells, employing the comparable lease method of evaluation, a method this Board has upheld in prior cases.

Mallon Oil Co., supra at 151; Laguna Gatuna, supra at 306, 307. The appraisal report in the case file contains an analysis of comparable leases for disposal of produced water and provides adequate support for the conclusion that 5 cents per barrel is a fair market rental value for produced water injection wells.

[2] Stovall does not assert error in the appraisal. Instead, it has submitted an analysis of the relationship between the barrels of oil and water produced by its Schrader Flats producing wells and its operating costs, arguing that the imposition of the 5 cents per barrel rental renders operation of the two wells uneconomic. 6/ An appraisal of fair market rental value of a nonlinear right-of-way will be affirmed on appeal if an appellant fails to show error in the appraisal methods used or fails to show by a preponderance of the evidence that the charges are in excess of the fair market rental value. When an appellant does not show an error in

BLM's appraisal method, the BLM appraisal may generally be rebutted only by another appraisal. Uno Broadcasting Corp., 120 IBLA 380 (1991); see Kelly E. Hughes, 135 IBLA 130 (1996); Laguna Gatuna, supra.

Any error in the calculation of the rental for the first year is automatically corrected when the rental adjustments are made at the end of the first term. Notwithstanding this fact, we deem it appropriate to note that it appears that BLM erred when calculating the rental for the period from May 1, 1994, through December 31, 1994. The BLM stated that the injection well "is averaging approximately 5848 barrels per month, based on

Monthly Report of Operations * * * for December 1986, January 1987, February 1987, March 1987, July 1987, January 1988, February 1988, May 1988, June 1988, [and] September 1988." 7/ When calculating the rental BLM relied on nine of the above listed MRO's and omitted two that reported zero barrels of water injected during the month.

6/ Stovall's letter, filed on Feb. 5, 1996, reported that Stovall had plugged and abandoned the Federal No. 3-26 well and reduced the output of the Federal No. 8-26. The letter supports Stovall's contention.

7/ The Decision indicates that these were the only MRO's for Right-of-Way WYW-90084 in BLM's file.

The BLM relied on the following MRO data in arriving at the 5,848 barrels per month average injection rate:

December 1986:	4,065 barrels
January 1987:	5,700 barrels
February 1987:	5,430 barrels
July 1987:	5,222 barrels
January 1988	6,315 barrels
February 1988	5,909 barrels
May 1988	6,252 barrels
June 1988	5,860 barrels
September 1988	<u>7,891 barrels</u>

Total barrels: 52,644 barrels

The BLM divided 52,644 barrels by 9 months for a 5,849 barrels per month average. This number was multiplied by \$0.05 per barrel (\$292 (rounded down)) and by 8 months (May 1, 1994, through December 31, 1994) to arrive at the \$2,336 rental amount stated in BLM's April 25, 1994, Decision.

The BLM erred by omitting data from the MRO in its files for April 1987 (5,840 barrels of produced water injected), and by not including the 2 months of zero use reported for March 1987 and May 1987. When those omissions are included in the computations, the average monthly injection was 58,484 barrels (52,644 + 5,840) of injected water. The 58,484 barrels should have been divided by 12 months (three additional reports) to arrive at a 4,873 (rounded down) per month average. Multiplying this amount by 5 cents per barrel results in a monthly rental of \$243 (rounded down). The monthly average rental (\$243) times 8 months (May 1, 1994, through December 31, 1994) equals \$1,944. The BLM overcharged Stovall by \$392.

In the Decision, BLM notified Stovall that it was required to submit MRO's and that future calculations of the rental fee could be based on Stovall's actual use. The BLM also noted that:

Future rental will be calculated after receipt of the January disposal report. Rental for the previous year will be adjusted based on actual volumes produced, and an advance payment will be estimated for the next year using the previous year actual disposal volume, as reported on the monthly reports.

(Decision at 2.)

Stovall's assertion on appeal that imposing the 5 cents per barrel rental will render its Schrader Flats Field uneconomic did not establish that its Federal No. 3-26 and Federal No. 8-26 are stripper wells (we believe they are), and it has not specified royalty arrangements with the Federal Government. The case file contains nothing to indicate that Stovall discussed its concern with BLM. It is also unclear whether Stovall intends to request consideration under the hardship exception at 43 C.F.R. § 2803.1-2(b)(2)(iv) (1994), which authorizes a lower rental in certain circumstances.

The regulation at 43 C.F.R. § 2803.1-2(b)(2)(iv) (1994) provides:

(2) The authorized officer may reduce or waive the rental payment under the following circumstances:

* * * * *

(iv) With the concurrence of the State Director, the authorized officer, after consultation with an applicant/holder, determines that the requirement to pay the full rental will cause undue hardship on the holder/applicant and that it is in the public interest to reduce or waive said rental. In order to complete such consultation, the State Director may require the applicant/holder to submit data, information and other written material in support of a proposed finding that the right-of-way grant or temporary use permit qualifies for a reduction or waiver of rental.

The BLM stated in the preamble to the rulemaking that this provision was "added by the proposed rulemaking to cover unique hardship cases." 52 Fed. Reg. 25816 (July 8, 1987). Further, the Board has upheld the application of this provision to existing rights-of-way. Mallon Oil Co., supra at 152. It does not appear that the economic analysis submitted with Stovall's SOR had been submitted to BLM prior to the appeal. Thus, BLM did not have Stovall's application for a hardship exception before it for adjudication.

For the reasons set out above, we affirm the imposition of the fair market rental for Right-of-Way WYW-90084, as modified to correct for the omissions discussed above. This Decision is without prejudice to Stovall's ability to seek a hardship reduction of the rental amount.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed as modified.

R.W. Mullen
Administrative Judge

I concur:

James L. Byrnes
Chief Administrative Judge

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